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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

REFORM OF THE JUDICIAL SYSTEM IN BULGARIA

Comments by Mr JAMES HAMILTON (MEMBER, IRELAND)

DRAFT LAW ON AMENDMENTS TO THE JUDICIAL SYSTEM ACT OF BULGARIA

Introduction

1. The Minister of Justice and European Legal Integration of Bulgaria has requested the Venice Commission to provide him with an analysis of the Bulgarian Draft Law on Amendments and Addendum on the Judicial System Act. The Draft Law was adopted by the Bulgarian Council of Ministers on 4 April 2002 and will be presented to the Bulgarian Parliament in June.

2. My comments are based only on an examination of texts, and I have not had discussions with the proposers of the Draft Law or other interested parties.

Constitution and Legal Situation

3. The Constitution of the Republic of Bulgaria was adopted by the Grand National Assembly on 12 July 1991. It provides that the judicial branch of Government shall be independent (Article 117.2 of the Constitution) and that the judicial branch of Government shall have an independent budget (Article 117.3 of the Constitution). The judicial branch of Government has three parts (a) the courts (b) the prosecutor's office and (c) investigating bodies which are responsible for performing the preliminary investigation in criminal cases.

4. Justice is administered by the Supreme Court of Cassation, the Supreme Administrative Court, courts of appeal, courts of assizes, court martial and district courts. Specialised courts may be set up by virtue of a law, but extraordinary courts are prohibited (Article 119 of the Constitution).

5. Judges, prosecutors and investigating magistrates are elected, promoted, demoted, reassigned and dismissed by the Supreme Judicial Council which consists of 25 members. There are 3 *ex officio* members, the Chairman of the Supreme Court of Cassation, the Chairman of the Supreme Administrative Court, and the Chief Prosecutor. Eleven of the members of the Supreme Judicial Council are elected by the National Assembly, and 11 are elected by the bodies of the judicial branch. All 22 elected members must be practising lawyers of high professional and moral integrity with at least 15 years of professional experience. The elected members of the Supreme Judicial Council serve terms of 5 years. They are not eligible for immediate re-election. The meetings of the Supreme Judicial Council are chaired by the Minister of Justice and European Legal Integration, who shall not be entitled to a vote (Article 130 of the Constitution).

6. Justices, prosecutors and investigating magistrates become unsubstitutable upon completing a third year in the respective office. They may be dismissed only upon retirement, resignation, upon the enforcement of a prison sentence for a deliberate crime, or upon lasting actual disability to perform their functions over more than one year (Article 129.3 of the Constitution). They enjoy the same immunity as the members of the National Assembly (Articles 132.1 and 70 of the Constitution). Therefore, they are

immune from detention or criminal prosecution but can be detained in the course of committing a grave crime. The immunity of a justice, prosecutor or investigating magistrate may be lifted by the Supreme Judicial Council only in circumstances established by the law (Article 132.2 of the Constitution).

7. The organisation and the activity of the Supreme Judicial Council, of the courts, the prosecution and the investigation, the status of the justices, prosecutors and investigating magistrates, the conditions and the procedure for the appointment and dismissal of justices, court assessors, prosecutors and investigating magistrates and the materialisation of their liability are to be established by law (Article 133 of the Constitution). This law is the Judicial System Act of the Republic of Bulgaria which has been enacted in 1994 and has been amended in 1994, 1996, 1997 and 1998.

The Draft Law

8. The Draft Law proposes a number of further amendments and modifications to the Judicial System Act. The stated purpose of the changes, as set out in the motives to the law, are as follows:

> "Over the period since the last essential amendments, the need has become clear to adopt a new Law to Amend and Supplement the Judicial System Act. The Reform Strategy for the Bulgarian Judicial System, the commitments undertaken by Bulgaria in its National Programme for the Adoption of the *Acquis* and the priorities listed in the Accession Partnership all require to reinforce the judicial system; enhance the professional training of magistrates; improve the administrative work of the judicial system; and better the operation of the Supreme Judicial Council. Thus, some of the political criteria for membership of the European Union will be met."

9. The principal changes proposed are as follows:

   a) Changes to the rules relating to the Supreme Judicial Council, in particular providing for the situation where a member is elected who does not meet the legal requirements for membership.
   b) A new system for evaluation of judges, prosecutors and investigators during the three-year period before they become irremovable.
   c) A procedure to allow for the demotion of certain judges.
   d) The introduction of a competitive procedure for the appointment of certain judges and prosecutors
   e) Provisions relating to the training of judges and the establishment of a National Institute of Justice.
   f) Provisions relating to the qualification of judges.
   g) The administration of the Supreme Judicial Council and judicial bodies.

10. It is important, in evaluating the draft law, to have regard at all times to the provisions of Article 6(1) of the European Convention on Human Rights insofar as it provides that the determination of civil rights and obligations or of criminal charges must be made by an independent tribunal. In evaluating whether a tribunal or court is independent the European Court of Human Rights has consistently held that regard has to be had to four factors, firstly, the manner of appointment of its members, secondly, their term of office,

thirdly, the existence of guarantees against outside pressure, and fourthly, the question whether the tribunal presents an appearance of independence (*Findlay v United Kingdom* [1997] 24 E.H.R.R 221)

The Supreme Judicial Council

11. The composition of the Supreme Judicial Council has already been noted. In its opinion on the Reform of the Judiciary in Bulgaria (22-23 March 1999, CDL-INF (99) 5) the Venice Commission concluded that the composition of the Council, chaired by the Minister of Justice and European Legal Integration (who does not have a vote) and consisting of the Chairmen of the Supreme Court of Cassation and the Supreme Administrative Court and the Chief Prosecutor, together with eleven members elected by the parliament and eleven elected by the judges and the prosecutors, was not in itself objectionable. However, the Commission underlined the importance of the election of the parliamentary component being depoliticised. This had not been the case prior to 1999. I have no information as to what the more recent practice has been, or whether any steps have been taken to address the concerns expressed by the Commission in 1999. The present law does not address this question. It is appreciated, however, that the composition of the Council and the role of the Minister of Justice and European Legal Integration is fixed by the Constitution. The Commission's concerns in 1999 related more to questions concerning the political culture than to the text of the Constitution or the law.

12. The Supreme Judicial Council itself will under the draft proposals be given the right to contest the legality of an election by the meetings of delegates who elect the judicial component of the Council. Where they do so, the Council will appoint a five-member mandate commission, which will prepare an opinion on the legality of the contested election. The Supreme Judicial Council then rules on the matter. Until it does so, the person whose election is contested does not participate in the meeting.

13. This provision appears to me somewhat problematical. It is asymmetrical in that it applies only to the judicial members, but not the parliamentary component. It therefore opens up the possibility of the parliamentary component having a say on the validity of the election of the judicial component, but not the other way around. Given the whole manner in which elections by the National Assembly to the Council was the subject of heated political controversy on earlier occasions this strikes me as unwise. Secondly, I wonder if the Council itself should rule on the validity of the election of its proposed members. This might be a task more appropriately given to another body – perhaps the Supreme Administrative Court, or the three ex-officio members of the Council, or even the Constitutional Court. Thirdly, it does not appear that there is any prohibition on the Council transacting other business – for example, making judicial appointments - while some of its members cannot take part in deliberations because the legality of their election is subject to a challenge. In these circumstances the members of the Council charged with making decisions may not be disinterested.

14. The provisions of Article 26 concerning the role of the chair have been repealed and replaced by Articles 34a, 34b and 34c. There appear to be no changes of substance except the introduction of a rule that the agenda should be circulated in advance, which is appropriate, and a provision (Article 34b (2)) that the agenda is to be approved by the chair who is the Minister of Justice and European Legal Integration. The chair should

not, in my view, have the power to prevent the Council from discussing and deciding a matter properly within its competence by means of refusing to approve an item for the agenda if this is the effect of the provision.

15. In Article 27 it is proposed to make a number of changes to the powers of the Council. Article 27 (1) 6 relates to the power to divest a judge, prosecutor or investigator of immunity or temporarily remove him or her from office. At present a decision on such a question can be requested by the Chief Prosecutor, the Presidents of the two Supreme Courts or the Minister of Justice and European Legal Integration. It is now proposed to add "and at the request of at least one fifth of the members of the Supreme Judicial Council". The Presidents, Chief Prosecutor and Minister should continue to have the power to seek a decision on such a question without any requirement in addition to convince one-fifth of the members before initiating a proposal. In other words, the provision should say "or at the request" instead of "and at the request". Perhaps this is a translation difficulty.

16. There seems to me, however, to be a more fundamental difficulty with the mechanics of exercising a power to dismiss or suspend a judge or remove the judge's immunity. If the judge, in such circumstances, is entitled to the protections of Article 6(1) of the European Convention on Human Rights, as it seems to me that he may, then if the Supreme Judicial Council is to preserve its status as an independent and impartial tribunal the moving party in such a hearing ought not to participate in the decision. It may be suggested that the one-fifth of the members are merely requesting the Council to make a decision and in so doing so do not pre-empt that decision, but in my view such a proposition would lack reality. It seems to me, therefore, that it would be desirable to add a provision to Article 27 to the effect that a member of the Council who requests a decision to discipline a judge, prosecutor or investigator, should not be entitled to vote on his or her own proposal.

17. The other changes to Article 27 seem to me beneficial, including the power to require and hear information from the courts, prosecutors and investigators, examine annual reports, and adopt codes of ethics.

18. Under the proposed revisions to Article 30 proposals concerning the number of judges, prosecutors and other office-holders and their appointment, promotion, demotion, transfer or removal from office must be presented via the Minister of Justice and European Legal Integration who shall submit them together with an opinion. The proposals must still, however, originate with the appropriate heads of courts or offices, and it does not appear the Minister is given any power of veto or right not to present the proposal unless the requirement that he approve the agenda can be so construed.

Inspectorate

19. The draft law amends the law relating to the Inspectorate within the Ministry of Justice and European Legal Integration whose principal function is to inspect the organisation of the administrative work of courts, prosecution offices and investigation services, and inspect and summarise the organisation, institution, progress and closure of court, prosecution and investigation cases. It cannot inspect the work of the Supreme Courts or the Chief Prosecutor or the Supreme Prosecution Offices. The inspectorate functions under the Chief Inspector who is appointed by the Minister of Justice and European

Legal Integration. The independence of inspectors is strengthened by the removal of the limit of their term of office (although it is not clear what the new term of office is to be or whether it is intended to be for an indefinite period) and by providing for the same procedures for removal as for a judge. An inspector who was formerly a judge may return to that position. On the whole the changes to these provisions seem positive.

Regional Court, District Court, and Court of Appeal

20. The chairmen of these courts are required to prepare annual reports and produce statistical data. The regional court as well as the district court and court of appeal are to hold general meetings and each court can propose a person as president of the court following a secret ballot. These developments are positive.

The Chief Prosecutor

21. The Chief Prosecutor is required to prepare an annual report. Again, this is a positive development.

22. Article 116 is being amended to delete the prohibition on the prosecutor terminating criminal proceedings without the permission of the court. This provision was introduced in 1998. The Commission in its Report of 22-23 March 1999 described this as a proportionate response to a perception of fraud among elements of the prosecution service. However, the organisation of the prosecutor's office in Bulgaria is hierarchical and the Chief Prosecutor should have sufficient authority to control his subordinates' activities without having to seek leave of a court of law in order to discontinue criminal proceedings. In my view the change now proposed is to be welcomed if the problems envisaged in 1998 have been sorted out.

Status of the judges, prosecutors and investigators

23. The draft law refers to newly defined positions as "administrative leaders" of the bodies of the judiciary. These include presidents and vice-presidents of courts, chief prosecutors and their deputies, and the directors and senior staff of the investigative bodies. Except in the case of the Presidents of the Supreme Court of Cassation and the Supreme Administrative Court and the Chief Prosecutor, these positions are to be for a fixed term of five years (renewable once) or seven years (not renewable). At the end of the term the judge retains his position and status as a judge and retains his rank and salary (Article 125a). It seems to me that this is a reasonable way of dealing with the administrative burden falling on the presidents of courts, prosecution offices and investigation agencies.

24. Article 127 (4) makes some changes in the qualification for appointment to the Supreme Courts or the Supreme Court Prosecution Offices. The qualification period is reduced from fourteen years practice to twelve including eight years as a judge, prosecutor, investigator, attorney or inspector. It is not clear to me whether that means that at least eight years must have been served in that capacity or whether it merely allows this period to be reckoned. If it is mandatory academic lawyers lacking this length of experience could be excluded. Under the former rule only five years experience as a judge, prosecutor or investigator was required as part of the fourteen years total.

25. Article 127a, 127b and 127c provide for the holding of competitions for judicial office up to and including the court of appeal if there is no applicant who has successfully graduated from the National Institute of Justice. The legality of the contest can be challenged before the Supreme Judicial Council and appealed to the Supreme Administrative Court. The rules for the contest are laid down by the Council. This seems to me a positive development.

Evaluation

26. Judges, prosecutors and investigators become permanent and irremovable after three years service. This is a constitutional provision. Article 129 proposes to introduce an evaluation process for all judges before the end of that period.

27. There are certain safeguards built into this process. The evaluation is carried out by a committee appointed by the head of the court, prosecution office or investigation service. Certain elements must be taken into account, including the opinion of the direct superior who must make an annual evaluation. The procedure for evaluation is set by the Supreme Judicial Council. A negative evaluation is treated as a proposal for removal on grounds of absence of qualities to discharge professional duties (Article 131 (3)). The matter then goes to the Supreme Judicial Council with a right of appeal to the Supreme Administrative Court.

28. The appointment of temporary or probationary judges who may not be removed is a very difficult area. A recent decision of the Appeal Court of the High Court of Justiciary of Scotland (*Starr v Ruxton*, [2000] H.R.L.R 191; see also *Millar v Dickson* [2001] H.R.L.R 1401) illustrates the sort of difficulties that can arise. In that case the Scottish court held that the guarantee of trial before an independent tribunal in Article 6(1) of the European Convention on Human Rights was not satisfied by a criminal trial before a temporary sheriff who was appointed for a period of one year and was subject to a discretion in the executive not to reappoint him. The case does not perhaps go so far as to suggest that a temporary or removable judge could in no circumstances be an independent tribunal within the meaning of the Convention but it certainly points to the desirability, to say the least, of ensuring that a temporary judge is guaranteed permanent appointment except in circumstances which would have justified removal from office in the case of a permanent judge. Otherwise he or she cannot be regarded as truly independent. While the situation of the Bulgarian temporary judge subject to evaluation by fellow judges is a far cry from the Scottish sheriff dependent on reappointment by the executive the following extracts from the judgment of Lord Reed in *Starrs v Ruxton* are apposite:

> *"Given that temporary sheriffs are very often persons who are hoping for graduation to a permanent appointment, and at the least for the renewal of their temporary appointment, the system of short renewable appointments creates a situation in which the temporary sheriff is liable to have hopes and fears in respect of his treatment by the executive when his appointment comes up for renewal: in short a relationship of dependency."* (at p.243)
>
> *"There can be no doubt as to the importance of security of tenure to judicial independence: it can reasonably be said to be one of the cornerstones of judicial independence."* (at p.245).

29. The European Commission on Human Rights, in Application No. 28899/95, *Stieringer v Germany,* 25 November 1996, found that there was no violation of Article 6(1) of the Convention where a criminal trial in Germany was held before three judges, two of whom were probationary, and two lay assessors. Prior to completion of their probationary period the probationary judges were liable to removal by the judicial authorities, subject to a right to challenge their removal before a disciplinary court. Under German law their participation in the trial had to be justified by some imperative necessity; the German courts had found such necessity to exist. The Commission held that there was no breach of Article 6(1). In that case, the executive had no role in the removal process which was subject to judicial control. The system under the proposed Bulgarian law is therefore more akin to that accepted by the European Commission in *Stieringer* to that condemned by the Scottish courts in *Starr v Ruxton.*

30. Nonetheless, the difficulties in principle with systems of evaluation of temporary judges, whether in civil or common law systems, are clear. The European Charter on the Status of Judges, adopted by the Council of Europe in July 1998, provides in paragraph 3.3 that where judges are appointed for a trial period, which should necessarily be short, any decision not to reappoint them should be taken by or on the advice or recommendation of or with the agreement of a body independent of the executive or the legislature with a membership of at least half consisting of the judge's peers. Given the composition of the Supreme Judicial Council which has a substantial component elected by the legislature, it seems doubtful that the proposed arrangements conform to the Charter.

    The explanatory memorandum to the Charter, comments as follows:-

> *"Clearly the existence of probationary periods or renewal requirements presents difficulties if not dangers from the point of view of the independence and impartiality of the judge in question, who is hoping to be established in post or to have his or her contract renewed".*

    The Charter is, however, not legally binding.

31. The Universal Declaration on the Independence of Justice, adopted in Montreal in June 1983 by the World Conference on the Independence of Justice (UN DOC.E/CN.4/Subs.2/1985/18/Add.6 Annex 6) states:

> *"The appointment of temporary judges and the appointment of judges for probationary periods is inconsistent with judicial independence. Where such appointments exist, they should be phased out gradually".*

32. Despite the safeguards which are built in to the draft law I continue to have misgivings about the proposal. It seems to me to undermine the independence of the individual judge during the three-year period of removability. Despite the laudable aim of ensuring high standards through a system of evaluation, it is notoriously difficult to reconcile the independence of the judge with a system of performance appraisal. If one must choose between the two, judicial independence is the crucial value.

33. I accept, however, that to an extent misgivings about evaluation may be more justified in a common law system where judges are appointed late in life having had lengthy prior experience as legal practitioners. Systems of evaluation of judges are harder to justify in

such a case. Where the judiciary is a lifetime career into which young lawyers are recruited the case for some form of evaluation, particularly early in the judge's career, may be stronger. In such a case, however, the case for exercising control over the type of case the judge may hear is strong. In *Stieringer* the probationary judges were not entitled to exercise criminal jurisdiction except in cases of imperative necessity.

34. If there is to be a system of evaluation, it is essential; firstly, that control of the evaluation is in the hands of the judiciary and not the executive. This criterion appears to be met by the Bulgarian law. Secondly, the criteria for evaluation must be clearly defined. In my view the criteria set out are in some respects too vague. One of the criteria for evaluating the judge is "quality of carrying out the respective proceedings and of the orders drafted" (Article 129 (4)). It seems to me that once a judge is appointed if anything short of misconduct or incompetence can justify dismissal then immediately a mechanism to control a judge and undermine judicial independence is created. Some of the criteria in Article 129 (4) are susceptible to very subjective evaluation. How does one measure motivation to work or team integration? How can one apply "incentives and sanctions" while respecting the independence of the judge?

35. I should add that my comments relate primarily to the judges and investigating magistrates whose individual independence requires to be safeguarded. Different considerations may apply to the prosecutors who work in a hierarchical system and where therefore it is independence of the prosecutor's office as a whole which requires protection rather than the independence of the individual prosecutor from his fellow prosecutors who are superior in the hierarchy.

36. Article 129 (6) also provides for the appointment of retired judges as judges where there are no other applicants. These seem to me inconsistent with judicial independence since such persons are not irremovable and may therefore be subjected to improper pressure.

37. Article 131a provides for a new system of demotion of judges, prosecutors and investigators, but not by more than two levels in the judicial hierarchy. The grounds for demotion are that the judge, prosecutor or investigator no longer possesses the required abilities to fulfil his professional duties. The matter is heard by the Supreme Judicial Council, which is subject to appeal to the Supreme Administrative Court. The difficulty I see with this is that a judge who has not got the abilities to fulfil his duties on one level may not have them at any level. If he is demoted, how is the litigant in the lower court to have confidence in that judge's decision?

38. Illegally dismissed judges are entitled on reinstatement to an indemnity not to exceed nine months salary (Article 139e). It is not clear to me on what principled basis this limit can be justified.

39. Promotion of judges in rank and salary can take place only after an evaluation (Article 142 (3)) under the procedures laid down in Article 129, which includes an annual evaluation by the direct superior. It follows that any judge wanting to be promoted or paid a salary increase must be evaluated annually. This again created similar difficulties of compatibility with the necessary independence of the individual judge for the reasons already set out above.

Training

40. Article 146a of the draft law proposes to establish a National Institute of Justice with the Ministry of Justice and European Legal Integration. It will be managed by a Managing Board composed of four representatives of the Supreme Judicial Council and three representatives of the Ministry of Justice and European Legal Integration. The Board will elect a Director of the Institute. The Minister of Justice and European Legal Integration will issue rules and "determine the constitution of the Managing Board" (which seems inconsistent with the earlier provision laying down the composition of the Board).

41. The principal function of the National Institute is the improvement of the knowledge and skills of judges, prosecutors and investigators, and training persons to obtain the qualification to be a judge, prosecutor or investigator. Persons who successfully complete courses have priority in appointment, setting remuneration and promotion. Indeed, Article 163 makes training at the Institute a requirement for judicial appointment.

42. In my opinion since the successful completion of a course is in most cases a prerequisite to judicial appointment control of the Board should rest with the judicial bodies themselves. Otherwise there is a risk that the independence of the judicial bodies is compromised. In my view the Board should consist only of representatives of the judges, prosecutors and investigators.

Incentives

43. Article 167a proposes the presentation of prizes, badges of honour, proclamation of "Judge of the Year", "Prosecutor of the Year", "Investigator of the Year" and even promotional incentives by the Supreme Judicial Council.

44. It is of the essence of judicial or prosecutorial independence that difficult and unpopular decisions have to be taken from time to time. Such decisions may not be likely to win approval even from a distinguished body such as the Supreme Judicial Council (11 of whose 25 members, be it remembered, are elected by Parliament). The singling out of certain judges and prosecutors for such accolades in my view is likely to inhibit rather than encourage the exercise of judicial independence. Judges should not have one eye to their popularity ratings, even among their fellow judges. Furthermore, there may be a risk of encouraging a Stakhanovite approach to judicial and prosecutorial work.

Disciplinary Responsibility

45. As already noted, the Supreme Judicial Council is empowered to adopt codes of ethics for judges, prosecutors and investigators.

46. Articles 168-185 of the Judicial System Act deals with disciplinary responsibility. A range of sanctions for offences and omissions, unjustified delay, or breach of oath, by judges, prosecutors and investigators are provided. The sanctions range from reprimand through reduction of pay, demotion and relocation to dismissal and can be imposed only following a hearing by a disciplinary panel of the Supreme Judicial Council, with an

appeal to the Supreme Administrative Court. Dismissal is, however, in the case of an irremovable judge, applicable only for breach of oath.

47. The draft law proposes to add to the grounds on which disciplinary responsibility can be imposed "acts falling within or without the scope of their official duties and violating the Code of Ethics" (Article 168 (1)).

48. Given the serious consequences for judges, prosecutors and investigators which can ensue for breach of the Code of Ethics it seems to me it would be desirable that such codes be given statutory effect as well as being adopted by the Supreme Judicial Council and that the precise disciplinary consequences of different breaches of the code be spelt out.

Administration

49. The draft law proposes to strengthen the administration of the Supreme Judicial Council and the other courts by establishing new offices of Secretary General of the Council and Court Administrators. The administration of the Supreme Courts, the Chief Prosecutor's Office and the National Investigation Service remain subject to rules to be established by the respective heads of those bodies. These provisions seem to me to be appropriate.

Budget

50. The draft law proposes to repeal the provision under which the judicial system has an autonomous budget (Article 196). The autonomous budget of the judiciary is, however, provided for by Article 117(3) of the Constitution of Bulgaria. It is not clear to me whether Article 196 is being repealed because it is considered unnecessary in the light of the Constitution, or whether it is intended to effect a real change in the budgetary system. I can find no new provisions which correspond to the repealed provisions in Article 196. If it is in fact intended to take away the judiciary's right to an autonomous budget this would represent a serious diminution in the independence of the judicial system.

Other Matters

51. A new provision in the draft (Article 12 (4)) requires judges, prosecutors and investigators to disclose their income and property annually to the Court of Auditors. This is a valuable safeguard against possible corruption.

52. Two other matters raised by the Commission in its opinion of 22-23 March 1999 have not been attended to in the draft law. In particular, in addition to the matters already referred to relating to the composition of the Supreme Judicial Council, these include:
    a) clarifying that Article 172 should refer only to administrative irregularities so as to avoid undue influence by the executive on the courts, and
    b) the continuance of the system of relocation of a judge, prosecutor or investigator to another district, as a disciplinary sanction, which the Commission considered open to objection.

Conclusion

53. The draft law represents a thorough, coherent and comprehensive code for the judiciary, prosecutors and investigators. Many of the proposed changes are very positive. I do, however, have a number of concerns which relate essentially to the independence of the judiciary, and more particularly to the necessary independence of every individual judge. I believe that there is both the scope and the need to further amend the draft law in ways which would strengthen that independence. My principal concerns relate to (a) the method of challenging the legality of elections for the judicial component in the Supreme Judicial Council, (b) the evaluation process for the individual judge during the three-year probationary period and annually thereafter, (c) the possibility of appointing retired judges, (d) provisions allowing for the demotion of judges, (e) the control of judicial training which in my view should rest with the judicial bodies and (f) control of the budget of the judicial system.

James Hamilton
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